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**Millsboro Nursing & Rehabilitation Center, Inc. and
United Food & Commercial Workers Union,
Local 27, AFL-CIO, CLC. Case 5-CA-28355**

August 31, 1999

DECISION AND ORDER

BY MEMBERS LIEBMAN, HURTGEN, AND BRAME

Pursuant to a charge filed on May 17, 1999, the General Counsel of the National Labor Relations Board issued a complaint on June 28, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 5-RC-14563.¹ (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On July 22, 1999, the General Counsel filed a Motion for Summary Judgment. On July 26, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.²

¹ 327 NLRB No. 153 (1999).

² Member Hurtgen dissented from the Board's overruling of the Respondent's Objection 4 in the underlying representation case, and he remains of that view. However, he agrees that the Respondent has not raised any new matters that are properly litigable in this unfair labor practice case. See *Pittsburgh Plate Glass v. NLRB*, 313 U.S. 144, 162 (1941). In light of this, and for institutional reasons, he agrees with the decision to grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a Delaware corporation with an office and place of business in Millsboro, Delaware, has been engaged in the operation and management of a nursing home. During the 12 months preceding the issuance of the complaint, a representative period, in conducting its operations described above, the Respondent had gross revenues in excess of \$250,000 and received goods valued in excess of \$10,000 from points located directly outside the State of Delaware. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held December 23, 1997, the Union was certified on March 17, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time, part full-time, and regular part-time certified nursing assistants, laundry employees/housekeeping employees, assistant food service director, cooks, food service employees, maintenance employees, ward clerks, activities employees, receptionists, admissions coordinator employed by the Employer at its nursing home facility in Millsboro, Delaware, but excluding all other persons employed by the Employer at its nursing home in Millsboro, Delaware including all employees who are licensed and may practice in the State of Delaware as either registered nurses or licensed practical nurses, Director of Nursing, Assistant Director of Nursing, nurse supervisors, resident care coordinators, quality assurance/in-service person, infection control nurse, treatment nurse, charge nurses, MDS coordinator, office clerical employees, bookkeepers, confidential employees, temporary or casual employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since April 8, 1999, the Union, by letter, has requested the Respondent to bargain, and, since that date, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after April 8, 1999, to bargain with the Union as the exclusive collective-bargaining repre-

sentative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Millsboro Nursing & Rehabilitation Center, Inc., Millsboro, Delaware, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food & Commercial Workers Union, Local 27, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time, part full-time, and regular part-time certified nursing assistants, laundry employees/house-keeping employees, assistant food service director, cooks, food service employees, maintenance employees, ward clerks, activities employees, receptionists, admissions coordinator employed by the Employer at its nursing home facility in Millsboro, Delaware, but excluding all other persons employed by the Employer at its nursing home in Millsboro, Delaware including all employees who are licensed and may practice in the State of Delaware as either registered nurses or licensed practical nurses, Director of Nursing, Assistant Director of Nursing, nurse supervisors, resident care coordinators, quality assurance/in-service person, infection con-

trol nurse, treatment nurse, charge nurses, MDS coordinator, office clerical employees, bookkeepers, confidential employees, temporary or casual employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Millsboro, Delaware, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 5 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 8, 1999.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 31, 1999

Wilma B. Liebman,	Member
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Peter J. Hurtgen,	Member
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J. Robert Brame III,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food & Commercial Workers Union, Local 27, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time, part full-time, and regular part-time certified nursing assistants, laundry employees/housekeeping employees, assistant food service director,

cooks, food service employees, maintenance employees, ward clerks, activities employees, receptionists, admissions coordinator employed by us at our nursing home facility in Millsboro, Delaware, but excluding all other persons employed by us at our nursing home in Millsboro, Delaware including all employees who are licensed and may practice in the State of Delaware as either registered nurses or licensed practical nurses, Director of Nursing, Assistant Director of Nursing, nurse supervisors, resident care coordinators, quality assurance/in-service person, infection control nurse, treatment nurse, charge nurses, MDS coordinator, office clerical employees, bookkeepers, confidential employees, temporary or casual employees, guards and supervisors as defined in the Act.

MILLSBORO NURSING & REHABILITATION CENTER, INC.